HIGH COURT OF KARNATAKA

Prakash Leasing Ltd.

v.

Deputy Commissioner of Income-tax, Central Circle-III*

N. KUMAR AND RAVI MALIMATH, JJ.

IT APPEAL NO.2557 OF 2005†

FEBRUARY 27, 2012

ORDER

N. Kumar, J. - The assessee company is engaged in the business of finance and leasing. They have filed a return of income for the assessment year 1996-97 on 28.11.1996 admitting the total loss of income of Rs. 20,58,030/-. Subsequently, they filed a revised return on 13.02.1997 admitting a total loss of Rs. 20,70,930/-. The return was processed under Section 143(1) on 20.02.1997 and it was accepted. The assessee company furnished another revised return on 24.10.1997 admitting nil income after claiming deduction under Section 80M. In the memo of income, it is stated that the assessee had inadvertently claimed depreciation @ 20% on 25 centers costing Rs. 1,10,87,350/- which were purchased on 28.03.1996. In this return, the depreciation claimed on this was withdrawn. This return was also processed on 09.03.1998 accepting the nil return. The case was taken up for scrutiny under Section 143(3) of the Act. Notices were issued along with detailed questionnaires. After hearing the assessee, the Assessing Authority was of the view that it is not clear whether the vehicles were purchased by the alleged lessees under hire purchase finance agreement or taken on lease. If the vehicles were purchased by this alleged lessees, the ownership of the vehicles lies only with them and not with the assessee company. Therefore, the assessee was asked to substantiate his claim that it actually owns the vehicles. The assessee contended that all the vehicles were owned by them and that they were leased out. The sale of the vehicle in the subsequent year for depreciation was under consideration. The assessee was directed to file a detailed note along with the lease agreement, payment particulars and such other evidence stating their case. The assessee furnished all the particulars sought for including the account ledger. Having gone through the same, the Assessing Authority held that the assessee has been financing for the purchase of vehicles, after receiving margin money from the customer. It is also clear that the interest was charged at 13% to 16% depending on the period of repayment and that the principal with interest is collected in instalments. Therefore, the claim of the assessee that the vehicles were purchased by them is not correct. Relying on the statements of 35 persons, the truck drivers, it was held that they have purchased the vehicles under the financial assistance from the assessee and therefore, the assessee is not the owner of the 36 motor vehicles owned and therefore, he is not entitled to depreciation. Similarly, 26 persons to whom summons had been issued did not turn up. Therefore, the Assessing Authority disallowed the depreciation claimed on these vehicles allegedly leased to the 26 persons. Similarly, depreciation was disallowed in respect of other vehicles to an extent of 20%. Thus, the depreciation in a sum of Rs. 75,28,720/- claimed by the assessee was disallowed. Aggrieved by the said order, the assessee preferred an appeal to the Commissioner of Income-tax (Appeals). The Appellate Authority was of the view that the assessee only discharged the primary onus to show that it owned the vehicles by showing original purchase bills of the vehicles and also lease agreements to show that the vehicles were leased. But when the Assessing Officer sought to verify the claim and pointed out the materials to show

that the claim was not correct in respect of some other claims, the onus fell on the assessee to prove the claim with additional materials in respect of these. The assessee did not produce any such evidence. Therefore, on that ground, the Appellate Authority confirmed the finding recorded by the Assessing Officer. Aggrieved by the same, the assessee preferred an appeal to the Tribunal. The Tribunal held that the claim of depreciation has rightly been rejected by the authorities. The summons and letters issued to the addresses as given by the assessee have not been responded. The assessee did not bother to give the changed addresses to the Assessing Officer nor supply the basic materials which could have established that the assessee was the owner of these assets. Therefore, it upheld the disallowance of the depreciation and dismissed the appeal. Aggrieved by these orders, the assessee is before this Court.

2. We have heard the learned Counsels for the parties.

3. The appeal was admitted on 25.10.2005 to consider the following substantial question of law:

Whether on the facts and circumstances of the case it is justified in law in holding that the disallowance of depreciation claim is correct, after having accepted the lease rental as income of the appellant?

4. From the aforesaid material, it is not in dispute that the assessee has shown the lease rental income which he had derived for the accounting year 1996-97 from the vehicles which he claimed as the owner. It is thereafter he had claimed the depreciation to which he is entitled to in law for which he is the owner of the vehicles. To substantiate his claim that he is the owner of the vehicles he has produced the original purchase bills of all the vehicles as well as the lease agreements, which he has entered into with the lessees. He has accounted for the entire lease rental in respect of all those vehicles in his profit and loss account. It is thereafter he has claimed deduction at 40% on the ground that it is the lessee who is using the vehicle. Now the claim for depreciation in respect of 36 + 26 + 3 vehicles is rejected on the ground that the assessee has failed to establish that they continue to be the owner of those vehicles.

5. According to the findings recorded by the authorities, the lessees have become owners and therefore, the assessee is not entitled to the benefit of deduction in respect of those vehicles. In the nature of things, the assessee is only in the business of leasing, which necessarily involves financing for purchasing these vehicles. The vehicles were used by the lessees only. He has produced the purchase bills showing the consideration paid by him for acquiring those vehicles. He has also produced the lease agreements. Once the lessee is put in possession of the vehicle, which he has purchased in law, the lessee also becomes the owner under the provisions of the Motor Vehicles Act. The word 'owner' has been defined in the Motor Vehicles Act as under :-

"Section 2(30) : Owner means a person in whose name a motor vehicle has been registered and where such person is a minor, the guardian of such minor and in relation to a motor vehicle which is the subject matter of a hire purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."

6. Therefore, if 36 persons to whom summons issued by the department replied by saying that they are the owners of the vehicles, it does not mean that the assessee ceased to be the owner of the vehicles. The law recognizes dual ownership in respect of motor vehicles. The person, who is in possession of hire purchase agreement or agreement of lease or agreement of hypothecation, is also recognised as the owner apart from the persons in

whose name the motor vehicles stand registered. Therefore, merely because the 36 persons to whom summons were issued claim that they are the owners, it does not mean that the assessee has failed to establish his claim of ownership. The purchase receipt and the lease agreement shows that the assessee is the owner and the lessee who was put in possession under the agreement is also owner under the Act. This legal aspect has not been kept in mind by the authorities.

7. In so far as the remaining 26 persons to whom summons issued were concerned, merely because they did not respond or the assessee did not furnish the correct addresses of those persons to be summoned, it does not lead to an inference that the assessee ceased to be a owner. In those cases, the ownership of the assessee is demonstrated by the purchase receipt as well as the agreement. In these cases, no other person other than the assessee claims the ownership of the vehicles. Therefore, the authorities were not justified in drawing an adverse inference and in holding that the assessee is not the owner. In respect of other 3 cases, merely because the vehicles were used by the lessees in their business, the assessee cannot be denied the depreciation @ 40%. In fact, it is not in dispute that in respect of all these vehicles, the assessee has acknowledged the receipt of lease rent and has shown the same in his profit and loss account. It is thereafter he is claiming depreciation. If the authorities were of the view that the assessee has failed to prove his ownership over those vehicles, then, if depreciation is to be disallowed then they also should not have taken that lease rental agreement for the purpose of making the assessment. Under these circumstances, it is also not in dispute that for the subsequent years, the assessee had been granted the benefit of depreciation. Therefore, the order to be passed by the authorities should be consistent. The approach of the authorities in so far as current assessment year is concerned is contrary to law and requires to be set aside. Hence, we pass the following :

ORDER

(*i*) The appeal is allowed.

(*ii*) Impugned order dated 07.01.2005 is set aside and the assessee is entitled to the depreciation, which he has claimed in his return for the assessment year 1996-97 to the full extent.